

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THE QUINULT INDIAN NATION,

Plaintiff,

v.

EDWARD A. COMENOUT, et al.,

Defendants.

CASE NO. C10-5345BHS

ORDER DENYING
DEFENDANT'S MOTION
TO DISMISS

This matter comes before the Court on Defendant Edward A. Comenout's ("Comenout") motion to dismiss for insufficient process and insufficient service of process under Rule 12(b)(4)&(5) of the Federal Rules of Civil Procedure (Dkt. 8). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.


On May 14, 2010, Plaintiff The Quinault Indian Nation ("Quinault") filed the complaint in this action. Dkt. 1. On June 14, 2010, counsel for Comenout filed a notice of death stating that Comenout died on June 4, 2010 and that a "substitution will be made when the personal representative is named and has been validly served with the summons

1 and complaint.” Dkt. 9. That same day, counsel for Comenout filed the motion to
2 dismiss under Rule 12(b)(4)&(5). Dkt. 8.

3 Rule 12(b)(4) allows a party to file a motion to dismiss for insufficient process and
4 Rule 12(b)(5) allows a party to file a motion to dismiss for insufficient service of process.
5 Although Comenout’s motion cites to both of these rules, he does not state how
6 Quinault’s process or service of process was lacking. On June 1, 2010, Quinault filed an
7 affidavit of service which appears on its face to be proper. Dkt. 6. Comenout has failed
8 to submit any evidence that Quinault’s process and service of process were insufficient to
9 comply with Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 4 & 5.

10 Therefore, it is hereby **ORDERED** that Comenout’s motion to dismiss (Dkt. 8) is
11 **DENIED**.

12 DATED this 25th day of August, 2010.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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